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ABSTRACT

The consequences of the end of minority preferences in the University of California (UC) schools of law and medicine are explored. The first students admitted into these graduate schools on a colorblind basis will begin classes in the fall of 1997. None of these students received a racial preference in admission, as a result of a 1995 decision by the UC Board of Regents. The media have described the effects of the new policy in uniformly alarmist and simplistic terms, but, in fact, the numbers of Blacks and Hispanics are generally down at the law and medical schools because in the past these schools have admitted minority students with weak academic qualifications. When color preferences were outlawed, it was inevitable that the racial mix of the incoming class would change. The decline in the number of minority students was especially great for African Americans. Hispanic enrollments dropped only half as much. Although the fact that no blacks were admitted to the UC San Diego medical school was widely publicized, the number of blacks enrolling in the state's medical schools actually increased slightly, and Hispanic enrollments dropped much less than in the law schools. Asian Americans are flourishing under the new policies, with their numbers in the first-year class at the UCLA (UC Los Angeles) law school up 81%. If Asians are included in the "minority" count, minority enrollments there are up about 25%. A desire to obscure Asian successes has led proponents of preferences to demote Asian Americans from the category of people of color. The actions of the UC Board of Regents have reduced the numbers of Black and Hispanic students in these graduate schools at present, but it will benefit those with solid qualifications by removing the stigma of having been admitted under lower standards. Contains 28 notes. (SLD)

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CEO POLICY BRIEF

September 1997

The End of Preferences

Behind the UC Admissions Controversy

by Stephan Thernstrom

Executive Summary

The first students admitted to the University of California's graduate schools of law and medicine on a colorblind basis will begin classes this fall. Thanks to a 1995 decision by the UC Board of Regents, none of these students received a racial preference in the admissions process.

The media have described the effects of the new policy in uniformly alarmist and simplistic terms. The typical story exaggerates the decline in minority enrollment and provides no insight into the reasons for it. The numbers for blacks and Hispanics are generally down at UC law and medical schools because in the past those schools have admitted minority students with weak academic qualifications. When color preferences were outlawed and all applicants judged by the same standard, it was inevitable that the racial mix of the incoming class would change.

The decline in the number of minority students was especially great for African Americans. Hispanic enrollments dropped only half as much, indicating that much stronger admissions preferences went to black candidates in the past. Although the fact that no blacks were admitted to the UC-San Diego medical school was widely publicized, the number of blacks enrolling in the state's medical schools this fall actually increased slightly. Hispanic enrollments dropped much less than in the law schools.

Asian Americans are flourishing under the new policies. Their numbers in the first-year class at UCLA Law School, for example, are up 81 percent. When Asians are included in the "minority" total there, minority enrollment is up about 25 percent. Asians are currently a third of all students enrolled in UC medical schools. A desire to obscure Asian successes under colorblind admissions has led proponents of preferences to demote Asian Americans from the "people of color" category altogether. Some, including President Clinton, have even spoken about Asian academic success in terms reminiscent of the "Yellow Peril" scare a century ago.

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Introduction

Newspaper headlines from around the country have told a bleak tale about how the University of California's law and medical schools are being affected by the Board of Regents vote in 1995 to eliminate "race, religion, sex, color, ethnicity or national origin" as a basis for admissions, hiring, or contracting by the university:

"Black Enrollment at Law School Plummets in California"
"Policy Shift Turning Law School Faces White"
"Steep Drop in Minority Students Hits Law Schools"
"UC Law Schools at Wits' End as Minorities Go Elsewhere"
"Fewer Minorities Apply to UC Medical Schools"
"UC San Diego Medical School Takes No Blacks for Fall Class"[1]

The policy already has gone into effect for graduate admissions for the 1997-98 academic year, and will extend to undergraduate admissions for 1998-99. How drastically will the end of racial and ethnic preferences alter the racial composition of the student body of the nation's leading state university? The first returns are now in. "As debate over affirmative action continues nationwide," one reporter observes correctly, "UC has emerged as case study number one."[2]

Although the various graduate schools in the system made most of their admissions decisions many months ago, it is still difficult to know precisely what has happened this year, much less to be confident that the apparent patterns visible in current data can be projected into the future. What is clear is that the evidence available thus far has been interpreted in a strikingly uniform and oversimplified way. The headlines convey a picture of dramatic, even catastrophic, change. The prize for the most lurid of them should go to a publication not usually prone to hysteria—the *London Times*—which came up with "Medical Ambition for Blacks Ends with Quota Ban."[3] In the same vein, Anthony Lewis of the *New York Times* has warned that "many law school and other classes" in California "may be lily-white next year."[4] In fact, Asian Americans—who are certainly not white—make up a strikingly large proportion of the students on most California campuses.

Advocates of preferences nevertheless have seized upon the reports out of California as proof that the continued use of academic double standards is essential to preserve "diversity." The head of the Sacramento chapter of the NAACP has declared that the end of racial preferences in graduate admissions has resulted in "an atrocity of the first order."[5] The president of the Hispanic National Bar Association has called the new policy "an outrage, an injustice, and an indignity," and has asked corporations to halt their financial contributions to schools that have eliminated affirmative action programs.[6]

President Clinton was quick to jump in. Although he has learned to gravitate toward the center on many issues, he is an unreconstructed liberal on racial matters. At a meeting of the Association of Black Journalists in July, he said that he was puzzled why "the people who promoted" Prop 209 "think it's a good thing to have a segregated set of professional schools." He added that he thought that "a lot of people who voted for Prop 209 are shocked at what happened." Not only shocked but astonishingly naive and foolish, the president apparently believes.[7]

They Were Called Preferences for a Reason

Not so long ago advocates of racial preferences in higher education habitually denied that they were giving significant "preferences" on the basis of race. They were only acting, they claimed, in a manner sanctioned by Justice Powell in the *Bakke* decision—using race to break ties between candidates who were difficult to distinguish on other grounds, gently placing their finger on scales that were otherwise pretty evenly balanced. "When you have to choose between two equally qualified persons," said Dean Herma Hill Kay of Boalt Hall, the UC-Berkeley law school, on the *McNeil-Lehrer NewsHour* in April 1995, it is appropriate to pick the "person of color" in order to "do something about the really fundamental problem of racial prejudice in this society."[8] (As we shall see shortly, the phrase "people of color" has largely disappeared from the California debate because it inconveniently includes overachieving Asian Americans).

Dean Kay's glib reference to "equally qualified" candidates conveyed the impression that the black and Hispanic students who were being admitted to the most prestigious and selective law schools as a result of affirmative action had exceptional academic records, but could only boast of 3.75 rather than 3.80 grade point averages, perhaps, and LSAT scores in the 94th rather than the 96th percentile.

A typical story in the Washington Post deplored the post-Hopwood decline in black and Hispanic enrollments at the University of Texas Law School and asserted that the school's earlier affirmative action policies had "led to the acceptance of minorities with slightly lower test scores than those of white students."[9]

This is wishful thinking, far removed from reality. Documents that became public as a result of the Hopwood litigation puncture the myth that students accepted because of racial preferences were distinguishable only by their skin color and their "slightly lower test scores." While claiming publicly that all of their students were splendidly "qualified," officials at UT were admitting in internal memos that the school had only been able to enroll "substantial numbers of black students" only by applying "radically different

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admissions standards."[10] White students at UT were "overwhelmingly drawn from the very top of the national pool. To get African Americans in any numbers, the associate dean wrote bluntly, the school had been forced to reach down "well into the bottom half of the national pool."

The effect was entirely predictable: "few" black students at UT were able to "finish above the bottom quarter or third of the class," fewer than half passed the bar exam on their first try, and many failed "again upon retaking" the test. The high bar failure rates of minority students admitted through affirmative action preferences were "an embarrassment that does real damage to our reputation." Despite "its supposed preeminence among law schools in the state," UT's pass rate on the bar exam was lower than that for Baylor, Southern Methodist University, and even lowly Texas Tech. Why? Because those schools had "few minority students" pulling down the average. The "embarrassment" was all the more painful because UT administrators committed to affirmative action could hardly make their explanation public; it could not be reconciled with their claims that they weren't really using double standards.[11]

A "Shocking" Discovery

Now that the University of California has completed the graduate admissions process without employing racial and ethnic preferences for the first time in a generation, we have some new evidence as to how much of a difference it makes to abandon racial preferences and to admit students on a colorblind basis. One year's experience in one state, of course, may be atypical for a variety of reasons. Preferences remain in effect throughout the nation's private universities and in all state institutions except in California, and in states covered by 5th Circuit Court of Appeals' *Hopwood* decision: Louisiana, Mississippi, and Texas. Outstanding minority students who might have applied to Boalt Hall or the UC-San Diego Medical School while preferences for their group were in effect might have decided not to enter the competition this time around, calculating that they had better chances of winning admission and financial aid from out-of-state or private schools that still pursue preferential policies. The intense politicization of the California higher education scene that resulted from the battle over the passage and the implementation of Proposition 209 (also known as the California Civil Rights Intitiative, or CCRI) may also have had an impact.

It should also be noted that the number and quality of applicants to particular schools can fluctuate for many reasons, often impossible to discern. Robert Alt of the Center for Individual Rights has pointed out that the entering class at the UC-Davis Medical School in 1993 included 12 African Americans and 19 Latinos.[12] The numbers for both groups fell sharply

thereafter, and the 1996 entering class had no blacks and just 7 Hispanics. The black and Hispanic total dropped 77 percent, even though racially preferential admissions policies were in effect over the whole period. Thus we should not try to make too much of the changes visible this year. Even with these caveats, though, the numbers from California state schools are illuminating.

What changes should we expect to find in law and medical school student bodies now that preferences have been eliminated? Those who profess great "shock" at the discovery that minority numbers have fallen in many University of California schools are being remarkably disingenuous. Was it really a "shock" when the number of Jewish students attending Ivy League schools rose and the number of non-Jews declined correspondingly after removing the quotas that had kept Jewish numbers down? It would be peculiar if the racial and ethnic proportions of students selected under a colorblind admissions system matched those from a time when admissions decisions were explicitly governed by a desire to maximize enrollments by members of racial or ethnic minority groups. If the number of minority candidates admitted had remained constant despite the abandonment of preferential policies, it would have suggested either that real preferences had not in fact been given in the past or that they were being continued furtively, in violation of the new official policy. The whole point of employing racial preferences in admissions is to change the composition of the student body—to bring more members of particular favored groups into the institution. When the preferences are abandoned, the numbers of such students will inevitably fall, unless other countervailing influences operate. The magnitude of the drop in minority acceptances will be a good index of the magnitude of preferences that had been given in the past.

UC's Colorblind Law Schools

Admissions data for the three law schools operated by the University of California for 1996-97, the last year of preferential policies, and for 1997-98 are set forth in Table 1. Although the enrollment figures for this fall are unofficial and incomplete, some conclusions of interest can be drawn from the table. At Boalt Hall, the number of African American students accepted into the first-year class plunged 82 percent, from 78 to 14, a fact that was invariably featured in stories dealing with the University of California's law schools. Hispanic admissions declined too, but the drop was considerably less—55 percent.[13]

What has attracted even more publicity is that none of the admitted blacks accepted a place at the school, but that tells us nothing about the long-term effects of the change in admissions policy.[14] It reflects the political war currently being waged in California. Ward Connerly, a UC Regent and

Table 1: Minority Admissions and Enrollments at University of California Law Schools, 1996-97 and 1997-98

	Black	Hispanic	Asian
UC-Berkeley Admitted			
1996-97	78	87	135
1997-98	14	39	149
Percent change	-82%	-55%	+10%
UC-Berkeley Enrolled			
1996-97	20	28	38
1997-98	0	14	41
Percent change		-50%	+8%
UC-Los Angeles Admitted			
1996-97	104	108	186
1997-98	21	74	199
Percent change	-80%	-31%	+7%
UC-Los Angeles Enrolled			
1996-97	19	45	48
1997-98	10	41	87
Percent change	-47%	-9%	+81%
UC-Davis Admitted			
1996-97	27	69	162
1997-98	20	50	107
Percent change	-26%	-28%	-34%
UC-Davis Enrolled			
1996-97	4	16	22
1997-98	NA	7	NA
Percent change	NA	-56%	NA
State Totals Admitted			
1996-97	209	264	483
1997-98	55	163	455
Percent change	-74%	-38%	-6%
State Totals Enrolled			
1996-97	43	89	108
1997-98	NA	62	NA
Percent change	NA	-30%	NA

The actual number enrolling in September cannot be determined precisely at this point. 1997-98 enrollment figures are for those who had by mid-summer declared their intention of accepting the offer of admission. Although none of the 20 African American students accepted at Berkeley plan to intend, one black student who had been accepted the year before and deferred admission will do so. 1996-97 data and and 1997-98 admissions figures from "UC Law Schools," from Academic Advancement, May 1997, kindly supplied by Robert Alt of the Center for Individual Rights. Other information from Jerry Cook's University of California Admissions Web Page (www.ucsd.edu/~jcook). Amy Wallace, "Lone Black in Boalt Hall Class Urges Change," *Los Angeles Times*, 19 August 1997, A3; Michael Lieda, "UC Affirmative Action Ban Hits Private Schools," *Los Angeles Daily Journal*, 4 August, 1997, A1; "No Blacks Make UCSD Med School," *San Francisco Examiner*, 31 July 1997, A2; Pamela Burdman, "Two UC Medical Incoming Classes Have No Blacks," *San Francisco Chronicle*, 1 August 1997, A1.

former chair of CCRI, has accused Dean Kay of telling African Americans who had been admitted to Boalt Hall that "I wouldn't enroll here either if I were black, because I wouldn't flourish here."[15] If it is true that Dean Kay offered that advice, she surely deserves to be fired. Such conduct is no more defensible than that of a southern law school dean in the 1950s who told the first black students admitted to the school that they had the legal right to attend the school but would surely not find the atmosphere congenial.[16]

Admissions for Asians, though, were up 10 percent at Boalt Hall, a fact that was conspicuously absent from the typical story on the subject. Indeed, in covering the UC story, the press managed the remarkable fact of demoting Asians from the categories "minority" and "people of color." In earlier years, Dean Kay was fond of boasting that 40 percent of Boalt Hall students were "people of color."[17] Thus it seems quite appropriate to ask what has happened to "people of color" at Berkeley under the new policy. It is fascinating to see how politically-correct writers have squirmed in dealing with this question. One story announced with horror that at Boalt Hall the "post-affirmative action minority presence will drop ... precipitously—from 40 percent of the present student body to less than 10 percent of this fall's anticipated incoming class."[18] Colorblind admissions, the author concluded, therefore had a pronounced "disparate impact on people of color," and amounted to "preferences for whites."

A drop from 40 percent to less than 10 percent is indeed noteworthy. But the author arrived at these figures by means of a remarkable bit of legerdemain. When we examine the composition of the last class admitted to Boalt Hall under the preferential regime, we find that African Americans were 7.6 percent of entering students, Hispanics 10.6 percent, and American Indians 1.5 percent. That, of course, falls a wee bit short of the 40 percent figure; it adds up to just half of 40 percent, 19.7 percent. To get anywhere close to a 40 percent "minority" or "people of color" presence, you need to add in the 14.4 percent of the class that consisted of Asian Americans. (That still comes out to only 34.1 percent, closer to a third than 40 percent, but advocates may be forgiven a little poetic license.)

It is certainly reasonable to categorize Asian Americans as members of a "minority" group, and to include them under the "people of color" rubric. They are classified as a racial group by the Bureau of the Census, unlike Hispanics, most of whom identify themselves as white. But when we seek to find out how the author arrived at the striking conclusion that "minority presence" at Boalt Hall would drop to less than 10 percent as a result of the elimination of preferences, we discover something very strange. Blacks were 1.8 percent of those admitted for 1997-98, Latinos 4.9 percent, and American Indians 0.2 percent, for a total that is indeed well under 10 percent. But what

about Asians, "people of color" who accounted for so much of the "minority presence" the year before? Fully 149 Asian Americans were admitted to Boalt Hall, an impressive 18.8 percent of the total number accepted, but they have suddenly vanished from the "minority" category. In the mind of this author, Asians somehow lost their minority status when preferential admissions were abandoned; all the "color" they had in 1996-97 has suddenly been bleached away. If they are counted in the "minority" or "people of color" totals for 1997-98, as they were just the year before, the "people of color" total does not plunge from 40 percent to "less than 10 percent"; it drops from 34.1 to 25.7 percent. This is a significant but hardly a dramatic decline.

The new admissions policy had no "disparate impact on people of color" in general; Asians fared distinctly better under the new policy than under the old. To claim that Boalt Hall has become "lily-white," as so many observers have, it is necessary to remove Asian Americans from the "people of color" category and classify them as white. In the days of apartheid, the South African government thought it might be bad for business to classify resident Japanese businessmen as "colored," so they designated them "honorary whites." Something similar has happened here. The Vanishing Asian serves a vital function in the war against Prop 209. It obscures the truth that many people who are indisputably non-white can compete very successfully in a fair, open, and colorblind process.

UCLA Law School is nearly as distinguished an institution as Boalt Hall; it ranks No. 17 in the *U.S. News & World Report* poll, as compared with No. 9 for Boalt Hall. But the pattern of admissions at UCLA Law has attracted far less attention.[19] The only point that has been considered as newsworthy is that the number of African Americans accepted to the UCLA Law School fell about as sharply as it did at Boalt Hall, by 80 percent. Little notice has been given to the fact that the number of admitted blacks who accepted a place there fell much less—by 47 percent. There was no boycott like that at Berkeley, perhaps because UCLA administrators behaved more responsibly than Dean Kay.

The sharp contrast between the pattern of black and Hispanic admissions at UCLA is also striking, though no reporter noticed it. Perhaps because of its location, UCLA seems to have attracted an impressively large number of Latino applicants who had strong academic qualifications, so that the number it accepted fell by just 31 percent, compared with 55 percent at Berkeley. UCLA it also did very well in getting large numbers of Hispanics to accept its offer. Although it admitted 24 fewer of them than it had the previous year, the number entering the school will drop only slightly, from 45 to 41.

Yellow Peril Redux

The biggest news from the UCLA Law School that did not make the news at all is what happened to Asian Americans in the post-affirmative action era. The number admitted rose only modestly, as at Boalt Hall, but the number who decided to enroll at UCLA jumped spectacularly, by 81 percent. The proportion of Asians in the 1996-97 entering class was 15.6 percent; in the first post-affirmative class it will exceed one quarter, impressive for a group that is only a tenth of the California population and that traditionally has inclined much more to careers in medicine and science rather than in the law. These figures mean that unless we arbitrarily deprive Asian Americans of their minority status, the headline "Minorities Show Drop at UCLA" has it all wrong.[20] In fact, minority enrollment at the UCLA Law School will not go down at all; instead, it will increase by 25 percent.

The only public comment that the huge increase in the Asian presence at the UCLA Law School has attracted so far, to my knowledge, came from Bob Beckel, the liberal co-host of CNN's *Crossfire* and longtime Democratic Party consultant. After uttering the usual lament about declining black and Hispanic enrollments at University of California graduate schools, Beckel went on to ask a guest opposed to preferences "Would you like to see the UCLA Law School 80 percent Asian? Because at the rate it is going ... by the year 2007 UCLA will be 80 percent Asian. Will that make you happy?"[21]

It may seem startling to hear a liberal Democrat echoing old racist fears of "the Yellow Peril," but it makes a certain sense, unfortunately.[22] If we accept the contemporary liberal assumption that the measure of social justice is whether each racial or ethnic group has its "fair share," over-achieving minority groups like Asians pose an embarrassing problem. Two years ago, in an interview with the *Sacramento Bee* that regrettably attracted no national attention, President Clinton took the same position as Beckel. Colleges and universities, the president said, must recognize that "diversity is our great strength." They should "only ... let in qualified people," of course, but should look at qualifications other than scores on a mere "pen-and-pencil paper test" and "college or high school transcripts." If you try to identify "who the best qualified people are" by just "reading paper," he went on, "there are universities in California that could fill their entire freshman classes with nothing but Asian Americans." In other words, Asian American students look so good on "paper" that it is necessary to use other admissions criteria in order to bring in "different kinds of people" so as to enhance "diversity."[23]

President Clinton's reasoning was precisely that of those who pushed for Jewish quotas in elite colleges and universities earlier in the century. Admissions decisions should not be made on the basis of objective academic criteria when the result would be the entry of "too many" students from some minority group.[24] A school with too many Jews would not be representative of the American population in general. Similarly, we can't have institutions

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that end up "nothing but" or even "80 percent" Asian American. To prevent that and thus to protect "diversity," we need to employ different academic standards for members of different groups—higher standards for Asians or Jews than for others. Affirmative action to preserve "diversity" from the threat of groups who perform too well by meritocratic standards is an old and unsavory story. Now it is advocated not to preserve WASP hegemony but to insure the admission of more members of "underrepresented" groups. The impact on overachieving minorities is just as negative either way.

The Effect on Asians and Hispanics

The picture at the law school of the University of California at Davis is somewhat different from that at either UCLA or Boalt Hall. Black enrollment at Davis had been considerably lower than at Berkeley or Los Angeles in past years, but in 1997-98 the number of African Americans admitted at Davis fell considerably less than at the other two schools—by only 26 percent. The number of Hispanics who were accepted also dropped rather modestly, by 28 percent. It may be that black and Latino students who did not get into Boalt Hall because preferences had ended also applied to the less competitive Davis, where their academic credentials were strong enough to make it in. That the number of Asians admitted to Davis fell by 34 percent, in sharp contrast to what happened at Boalt Hall and UCLA, may point to a similar shifting of application patterns in response to the changed rules of the game. Asian Americans whose records were not quite strong enough to win them admission to Boalt Hall or UCLA Law School in the past, when about a fifth of the places were reserved for "underrepresented minorities," were no longer settling for Davis and were competing for slots in the two top state schools.

The overall pattern for the state's three law schools is that both the number of black applicants who were accepted and the number who enrolled was down dramatically. The number of African-American students admitted fell by 74 percent; although some data are missing, it appears that the drop in actual enrollments was equally large. Hispanic acceptances at the three law schools fell by only half that much, and the same holds for Hispanic enrollments.

There is an intriguing puzzle here. The preferential policies in place before 1997-98 resulted in the admissions of nearly as many African Americans as Latinos—83 percent as many over the preceding four years—even though there were more than three times as many Hispanics in the California population as blacks.[25] Once preferences were lifted, Latinos outnumbered blacks among those accepted by almost three-to-one. It follows that African Americans must have been receiving a much bigger affirmative

action boost than Latinos; if they had not benefited from stronger preferences, their rate of admission this year would not have dropped twice as much as that for Hispanics. Had they had been judged by the same standards applied to blacks, many more Latino applicants would have been admitted when preferential policies were still in force.

UC's Colorblind Medical Schools

The most prominently featured story about University of California medical school admissions has focused on the San Diego campus, which admitted no black students at all to the class entering in 1997-98. This news made banner headlines not only in California papers like the *Los Angeles Times*, the *San Francisco Examiner*, but even in the *London Times*. The *Chronicle of Higher Education*, a weekly publication whose preoccupation with diversity issues borders on the obsessive, summed up the California picture in its August 8, 1997, issue with the headline "No Blacks are Admitted to California Medical School."[26] That no African-American students were admitted for 1997-98 seems dramatic. But only three of the 122 members of the class that entered UC-San Diego the previous year at UC-San Diego were black, so the change was not exactly momentous. It was enough to catch the eyes of reporters, though. The brief story in the *Chronicle* also noted two further facts—that Latino admissions were also down precipitously at San Diego and that just one black applicant had been admitted to the medical school at UC-Irvine.

Neither the UC-San Diego nor the UC-Irvine medical schools are the most distinguished of the state's medical institutions; the UC-San Francisco and UCLA medical schools are far more eminent. The former ranks fourth in the nation on the current *U.S. News* poll and the latter is eleventh.[27] So why were San Diego and Irvine the focus of so much attention? It is hard to resist the conclusion that these schools were featured solely because they fit with the preconceptions of those covering—and thus making—the news. What happened this year at the state's other three medical schools, including the two preeminent ones (UCLA and UC-San Francisco) was very different, but somehow less newsworthy. (See Table 2.) For 1996-97 the UCLA Medical School admitted five fewer blacks than it had the year before, but it also admitted five more Hispanics. The pattern at the UC-San Francisco Medical School was a slight variation on the same theme—with two more African Americans accepted but three fewer Hispanics. And at the UC-Davis Medical School, the site of Allan Bakke's law suit, precisely the same number of blacks and just one fewer Hispanic were admitted.

In the five medical schools taken together, the number of blacks who were admitted dropped just 21 percent, and the number of Hispanics by

Table 2: Minority Admissions and Enrollments at University of California Medical Schools, 1996-97 and 1997-98

	Black	Hispanic	Asian
UC-San Diego Admitted			
1996-97	7	42	107
1997-98	0	12	NA
Percent change	—	-71%	NA
UC-San Diego Enrolled			
1996-97	3	16	43
1997-98	0	5	48
Percent change	—	-69%	+12%
UC-Irvine Admitted			
1996-97	4	21	79
1997-98	1	12	NA
Percent change	-75%	-43%	NA
UC-Irvine Enrolled			
1996-97	2	5	31
1997-98	0	5	NA
Percent change	—	0	NA
UC-Los Angeles Admitted			
1996-97	21	30	79
1997-98	16	35	NA
Percent change	-24%	+17%	NA
UC-Los Angeles Enrolled			
1996-97	10	20	41
1997-98	10	21	NA
Percent change	0	+5%	NA
UC-San Francisco Admitted			
1996-97	19	32	61
1997-98	21	29	NA
Percent change	+11%	-9%	NA
UC-San Francisco Enrolled			
1996-97	11	19	44
1997-98	12	NA	NA
Percent change	+9%	NA	NA
UC-Davis Admitted			
1996-97	11	33	63
1997-98	11	32	NA
Percent change	0	-3%	NA
UC-Davis Enrolled			
1996-97	0	7	31
1997-98	5	7	NA
Percent change	—	0%	NA

State Totals Admitted	Black	Hispanic	Asian
1996-97	62	158	392
1997-98	49	120	NA
Percent change	-21%	-24%	NA
State Totals Enrolled			
1996-97	26	67	NA
1997-98	27	NA	NA
Percent change	+4%	NA	NA

As with Table 1, 1997-98 enrollments represent numbers who had by mid-summer indicated that they planned to enroll in the fall. 1996-97 data from "UC Medical Schools," *Academic Advancement*, March 31, 1997, supplied by Robert Alt of the Center for Individual Rights. Other figures from University of California Admissions Web Site (www.acusd.edu e_code), Amy Wallace, "UC San Diego Medical School Takes No Blacks for Fall Class," *Los Angeles Times*, 1 August 1997, A1; "No Blacks Make UCSD Medical School," *San Francisco Examiner*, 31 July 1997, A-2; Pamela Martineau, "Gains for Minority Students," *Sacramento Bee*, 1 August 1997, A1.

slightly more—24 percent. The declines for both groups were much less sharp than in the case of law school admissions, and the total number of African Americans who actually enrolled actually increased slightly, from 26 to 27. The lack of any significant difference between black and Hispanic applicants is also noteworthy. One interpretation is that students who apply to medical school are a more select group than those applying to law school. All medical schools require a solid foundation in basic science courses, and the grading in such courses tends to be stricter than it is in courses in the humanities or social sciences. The need to do respectably well in Biochemistry 101 and the like, according to this argument, sifts out many marginal candidates who would feel free to apply to law school if interested. Racial preferences in law school admissions may have been considerably stronger than in medical school; hence the end of preferences naturally made less of a difference.

This seems plausible, certainly. On the other hand, a quite different interpretation may be derived from information in a recent story in the *San Francisco Chronicle*. The author contended that minority admissions to the medical schools were less affected by the adoption of colorblind policies because the medical schools had previously not relied as heavily as the law schools upon grades and scores in selecting their students. They had

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performed a "more holistic review" of the applications, and their procedures were accordingly much less affected by the vote of the Regents.[28] A "more holistic review," of course, might also be described as a more subjective review, one that might entail giving just as much in the way of racial preferences as the California law schools had been doing but doing it in a more subtle way that would be much more difficult to eliminate.

In reviewing the debate over law school admissions, we have already encountered the Vanishing Asian. He (or she) is even more conspicuously absent from the discussion of medical school admissions. No newspaper, magazine, wire service, or television script available to researchers on Nexis provides any data whatever about how the new admissions policy has affected Asian Americans. The silence is deafening and eerie. Indeed, not one story even tells the curious reader how many Asian Americans were enrolled in the state's medical schools before the ban on preferences went into effect. It takes energetic research, including telephone calls to the Office of the President of the University of California, to learn that Asian Americans were 33.4 percent of all the students who began their studies at one of the five medical schools in the 1996-97 academic year. Even energetic research has failed to disclose any figures about how many Asians were admitted and how many chose to enroll for 1997-1998. Surely some administrators at least knew by late August how many students of Asian background were accepted to a California medical school six months or so ago, but I was unable to pry the numbers out of anyone. One official expressed surprise that I was interested in such figures because "Asians are not an underrepresented minority at the University of California." Indeed they are not, but that does not mean that they should suddenly be rendered invisible.

We can say with confidence, though, that California's medical schools this fall will meet the diversity standard set by Dean Kay of Boalt Hall two years ago when she expressed satisfaction that 40 percent of the students there were "people of color." It seems inconceivable that the shift to colorblind admissions for 1997-98 will bring the Asian share of the student body in California state medical schools below its current 33.4 percent, and it is an excellent bet that the fraction of Asians will increase substantially. Since the admissions of black and Hispanic applicants have fallen off much less than in the law schools, it seems a sure bet that the overall "people of color" average will exceed the 40 percent mark.

Conclusion

Press coverage of the UC system's new admissions policy has stressed the steep decline in the numbers of black and Hispanic students admitted to the law and medical schools without conveying any understanding as to *why* it happened. The answer is that the preferences given to minority students in the past were not a matter of making a small allowance for "slightly lower test scores"; they involved lowering academic standards in the way illustrated by our uncensored glimpse at the University of Texas Law School. Minority students arrived at UT with a level of academic skills that put them at the bottom of the class and led many to flunk the bar exam. This can hardly have contributed to their self-esteem, and it could have created or reinforced negative stereotypes about the intellectual capacities of minorities.

The actions of the Regents of the University of California that have been described as a blow to African-American and Hispanic students have reduced their numbers somewhat in the short run. But it will benefit those with solid qualifications by removing the stigma of having been admitted under different and distinctly lower standards. And it will produce a far healthier academic environment in which no group of students predictably and consistently ends up with the poorest academic records and with high rates of failure on the bar exams or medical boards.

NOTES

1 TAKEN FROM, RESPECTIVELY, THE *ST. LOUIS POST-DISPATCH*, 27 JULY 1997; *MADISON CAPITAL TIMES*, 2 JUNE 1997; *MEMPHIS COMMERCIAL APPEAL*, 13 JULY 1997; *SAN FRANCISCO CHRONICLE*, 18 JULY 1997; *LOS ANGELES TIMES*, 16 JUNE 1997 AND 1 AUGUST 1997.

2 PAMELA BURDMAN, "HOW UC ADMISSIONS HAVE BEEN RESHAPED: RECRUITING WITHOUT AFFIRMATIVE ACTION," *SAN FRANCISCO CHRONICLE*, 18 AUGUST 1997, A1.

3 *LONDON TIMES*, 2 AUGUST 1997.

4 ANTHONY LEWIS, "ABROAD AT HOME: WHITER THAN WHITE," *NEW YORK TIMES*, 23 MAY 1997, A31. THE LANGUAGE POLICE NEVER COMPLAIN ABOUT "LILY-WHITE," FOR SOME REASON, BUT WOULD DOUBTLESS HOWL AT A SIMILAR REFERENCE TO THE NATION OF ISLAM, SAY, AS A "COAL-BLACK" OR "PITCH-BLACK" ORGANIZATION.

5 Quoted in Pamela Martineau, "Gains for Minority Students," *Sacramento Bee*, 1 August 1997, A1. This story, which focused on the UC Davis Medical School, was one of the few exceptions to the general pattern of coverage I criticize in this essay.

6 Quoted in Tracy Venegas, "Bar Urges Boycott of Universities," *U.P.I. Regional News*, 21 August 1997.

7 "Remarks of the President to the National Association of Black Journalists," Chicago, July 22, 1997. See also Richard Cohen, "Clinton is Confused: It's Not Segregation," Des Moines Register, 24 July 1997, 13.

8 McNeil-Lehrer NewsHour, 24 April 1995.

9 Sue Anne Presley, "Texas Campus Attracts Fewer Minorities," *Washington Post*, 28 August 1997, A1.

10 Draft of a letter from Dean Mark Yudoff to Clara Meek, 18 May 1988, written by Associate Dean Guy Wellborn. The associate dean was much more candid than his boss. Dean Yudoff made a great many changes in the draft, all of them serving to soften or obscure the painful truths set forth in the draft.

11 When UT Dean Mark Yudoff was questioned about the enormous racial difference in rates of passing the bar exams, he conceded that the gap was huge, and that the minority failure rate continued to be very high even on the second try. He asserted that "they still can take it a third time," but when pressed he confessed that he did not know "what the final bottom-line percentage" success rate for such students was on their third try; Deposition of Mark Yudoff, 11 March 1994, 207-209. If the people who ran the University of Texas Law School truly did not keep track of how many of their minority graduates never made it through the bar exams and were thus kept out of the profession they spent three years training for, their lack of curiosity suggests a desperate eagerness to remain ignorant of unwelcome facts.

For evidence that the problems created by affirmative action at UT Austin were not at all peculiar to that institution, note that a study of the top ten law schools in the mid-1970s found that the grades of the average black student were at just the *8th percentile*, and that more than half of the African Americans in those schools ended up in the bottom tenth of their class; Robert Klitgaard, *Choosing Elites* (New York: Basic Books, 1985), 162-63. For evidence of much higher rates of bar exam failure by minority beneficiaries of affirmative action, see Christopher A. Ford, "Challenges and Dilemmas of Racial and Ethnic Identity in American and Post-Apartheid South African Affirmative Action," *UCLA Law Review*, v. 43, No. 6 (August 1996), 1982. In 1992, 82 percent of whites taking the New York state bar examination for the first time passed, but only 37 percent of blacks. In California the differential in 1994 was 82 percent versus 53 percent. For similar evidence on the performance of minority physicians on tests of professional competence, see the RAND study of graduates of the medical school class of 1975—the class to which Allan Bakke applied and was turned down. The sample included 715 graduates who were classified as minorities, 80.2 percent of them African Americans. The

STUDY NOTED THAT BOARD-CERTIFIED PHYSICIANS HAVE BEEN SHOWN TO PROVIDE A HIGHER QUALITY OF CARE; ONLY 49 PERCENT OF THE BLACKS AND HISPANICS HAD QUALIFIED FOR BOARD CERTIFICATION BY 1984, AS COMPARED WITH 80 PERCENT OF WHITES AND ASIANS; STEVEN N. KEITH, ROBERT M. BELL, AND ALBERT P. WILLIAMS, *ADDRESSING THE OUTCOME OF AFFIRMATIVE ACTION IN MEDICAL SCHOOLS: A STUDY OF THE CLASS OF 1975*, RAND/R-3481-CWF (SANTA MONICA, CALIF.: THE RAND CORPORATION, 1987), TABLE 27. FURTHERMORE, THE LIKELIHOOD THAT MINORITY PHYSICIANS WOULD PASS THE BOARD EXAMS COULD BE PREDICTED RELIABLY FROM THEIR UNDERGRADUATE GRADES AND SCORES ON THE MEDICAL COLLEGE ADMISSIONS TEST. ONLY 32 PERCENT OF THE MINORITY PHYSICIANS WITH THE LOWEST "UNDERGRADUATE PERFORMANCE INDEX," THOSE WHO GOT THE BIGGEST AFFIRMATIVE ACTION BOOST, PASSED THEIR MEDICAL BOARDS, VERSUS 83 PERCENT OF THOSE WITH STRONG ACADEMIC RECORDS WHO NEEDED NO PREFERENCES FOR ADMISSIONS. THE LATTER PASSED THE BOARDS IN SLIGHTLY HIGHER PROPORTIONS THAN NON-MINORITIES IN THE SAMPLE. A SIMILAR PATTERN HOLDS FOR THE BAR EXAMINATIONS AS WELL. FOR A MUCH-PUBLICIZED BUT ERRONEOUS STUDY THAT ATTEMPTS TO DEMONSTRATE THE CONTRARY, SEE LINDA F. WIGHTMAN, "THE THREAT TO DIVERSITY IN LEGAL EDUCATION: AN EMPIRICAL ANALYSIS OF THE CONSEQUENCES OF ABANDONING RACE AS A FACTOR IN LAW SCHOOL ADMISSIONS DECISIONS," *NEW YORK UNIVERSITY LAW REVIEW*, VOL. 72 (APRIL 1997), 1-53. GAIL HERIOT, "THE TRUTH ABOUT PREFERENCES," *THE WEEKLY STANDARD*, 21 JULY 1997 IS A GOOD CRITIQUE OF THIS ARTICLE; I AM CURRENTLY WRITING A FULLER CRITICAL EVALUATION.

12 PHONE CONVERSATION WITH ROBERT ALT, 14 AUGUST 1997.

13 SOME OF THE AVAILABLE FIGURES DISTINGUISH MEXICAN AMERICANS AND PUERTO RICANS, WHO THE UNIVERSITY OF CALIFORNIA CLASSIFIES AS "UNDERREPRESENTED MINORITIES," FROM OTHER HISPANICS. BUT SOME DO NOT, AND I HAVE BEEN FORCED TO EMPLOY THE BROADER UMBRELLA CATEGORY IN THIS PAPER.

14 FOR A CHARACTERISTIC REFERENCE TO BOALT HALL THAT IS THOROUGHLY MISLEADING TO ANYONE WHO DOES NOT KNOW THE FACTS, SEE SUE ANNE PRESLEY, "TEXAS CAMPUS ATTRACTS FEWER MINORITIES," *WASHINGTON POST*, 28 AUGUST 1997, A1. THIS ARTICLE ABOUT THE UNIVERSITY OF TEXAS DECLARES THAT "CALIFORNIA IS THE ONLY OTHER STATE WITH AN ADMISSIONS POLICY THAT BANS THE USE OF RACE ... AT THE UNIVERSITY OF CALIFORNIA AT BERKELEY SCHOOL OF LAW, ONLY ONE AFRICAN AMERICAN IS ENTERING THE FIRST-YEAR CLASS AND UNIVERSITY OFFICIALS ARE EQUALLY DISMAYED OVER THE LACK OF DIVERSITY." A READER WHO KNEW NOTHING ELSE ABOUT THE MATTER WOULD LOGICALLY CONCLUDE THAT ONLY ONE BLACK STUDENT HAD BEEN ADMITTED TO THE SCHOOL AS A RESULT OF THE NEW POLICY.

15 K.L. BILLINGSLEY, "CONNERLY: BLACKS SPURNED IN EFFORT TO INFLUENCE REGENTS," *WASHINGTON TIMES NATIONAL WEEKLY EDITION*, 7-27-97, 13.

16 WE MIGHT SPECULATE THAT THE FACT THAT ALL 14 OF THE AFRICAN AMERICAN STUDENTS ADMITTED TO BOALT HALL DECLINED THE INVITATION HAD SOMETHING TO DO WITH FINANCIAL AID. PERHAPS THEY WERE ADMISSIBLE IN A COLORBLIND COMPETITION BUT DID NOT RANK HIGH ENOUGH TO QUALIFY FOR LIMITED FELLOWSHIP SUPPORT. SOLID BUT LESS THAN DAZZLING RECORDS WOULD HAVE BEEN ENOUGH TO WIN THEM FINANCIAL AID AT ONE OF THE ELITE SCHOOLS THAT CONTINUED TO VIEW RACE AS AN IMPORTANT QUALIFICATION. IN FACT, 4 OF THE

14 ACCEPTED OFFERS FROM HARVARD, 2 WENT TO YALE, AND 2 TO STANFORD; AMY WALLACE, "LONE BLACK IN BOALT HALL CLASS URGES CHANGE," *LOS ANGELES TIMES*, 19 AUGUST 1997, A3. WHETHER FINANCIAL AID AWARDED ON A PREFERENTIAL BASIS INSPIRED THOSE DECISIONS IS UNKNOWN. NOTE, THOUGH, THAT SUCH AN ARGUMENT WOULD APPLY EQUALLY WELL TO UCLA, BUT THE PROPORTION OF ADMITTED BLACKS WHO CHOSE TO ATTEND ACTUALLY ROSE THERE THIS YEAR.

17 TRANSCRIPT OF MCNEILL-LEHRER NEWSHOUR, 24 APRIL 1995.

18 KACY COLLINS KEYS, "PRIVILEGED CLASSES," *THE RECORDER*, 28 MAY 1997, 4.

19 "NEWS YOU CAN USE: ANNUAL GUIDE: BEST GRADUATE SCHOOLS: THE LAW RANKINGS," *U.S. NEWS AND WORLD REPORT*, 10 MARCH 1997.

20 *LOS ANGELES DAILY NEWS*, 12 JULY 1997, A1.

21TRANSCRIPT OF CROSSFIRE, 5 MAY 1997.

22 IT MAKES SENSE HISTORICALLY AS WELL. THE ANTI-CHINESE MOVEMENT THAT EMERGED IN LATE-NINETEENTH CALIFORNIA WAS A WORKING CLASS MOVEMENT. THE PRINCIPAL ANTI-CHINESE ORGANIZATION WAS THE WORKINGMAN'S PARTY, LED BY AN IRISH IMMIGRANT LABOR LEADER. ON THE OTHER HAND, LIBERALS WERE THE MAIN CRITICS OF JEWISH QUOTAS IN HIGHER EDUCATION. UNFORTUNATELY, MANY TODAY HAVE ABANDONED THE MERITOCRATIC PRINCIPLES THAT WERE INVOKED AGAINST JEWISH QUOTAS.

23 LEE RENNERT, "PRESIDENT EMBRACES MINORITY PROGRAMS," *SACRAMENTO BEE*, 7 APRIL 1995, A1. CHARLES KRAUTHAMMER GAVE THIS EGREGIOUS STATEMENT SOME WELL-DESERVED PUBLICITY TWO YEARS LATER, IN "THE PRESIDENT AND THE BURDEN OF RACE," *WASHINGTON POST*, 20 JUNE 1997, A22.

24 ON THE HISTORY OF JEWISH QUOTAS, SEE MARCIA GRAHAM SYNOTT, *THE HALF-OPENED DOOR: DISCRIMINATION AND ADMISSIONS AT HARVARD, YALE, AND PRINCETON, 1900-1970* (WESTPORT, CONN.: GREENWOOD PRESS, 1979).

25 STRICTLY SPEAKING, THE PROPER COMPARISON WOULD NOT USE POPULATION PERCENTAGES BUT PROPORTIONS AMONG RECENT COLLEGE GRADUATES. BUT EVEN AFTER MAKING FULL ALLOWANCE FOR THAT, IT IS CLEAR THAT AFRICAN AMERICANS FARED MUCH BETTER THAN LATINOS IN LAW SCHOOL ADMISSIONS UNDER AFFIRMATIVE ACTION.

26 JEFFREY SELINGO, "NO BLACKS ARE ADMITTED BY CAL. MEDICAL SCHOOL," *CHRONICLE OF HIGHER EDUCATION*, 8 AUGUST 1997, A32.

27 "NEWS YOU CAN USE: ANNUAL GUIDE: BEST GRADUATE SCHOOLS: THE MEDICAL SCHOOL RANKINGS," *U.S. NEWS AND WORLD REPORT*, 10 MARCH 1997.

28 PAMELA BURDMAN, "HOW UC ADMISSIONS HAVE BEEN RESHAPED: RECRUITING WITHOUT AFFIRMATIVE ACTION," *SAN FRANCISCO CHRONICLE*, 18 AUGUST 1997, 1.

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